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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 10-0859 RS
)	
Plaintiff,)	
)	THE UNITED STATES' TRIAL BRIEF
v.)	
)	
GARY LEE HARDEMAN,)	Date: July 22, 2013
)	Time: 8:30 a.m.
Defendant.)	Place: Courtroom 3, 17th Floor

INTRODUCTION

The defendant in this trial, Gary Hardeman, is accused of engaging in illicit sexual conduct in foreign places, and attempting to do so, in violation of 18 U.S.C. § 2423(c) and (e), and with doing so while under an obligation to register as a sex offender, in violation of 18 U.S.C. § 2260A. The government expects the evidence to show that Hardeman traveled to Mexico City in October 2007, and stayed there until January 2008. In December 2007 he approached a 13-year-old girl who was sitting on the sidewalk near his hotel, took her to dinner and a movie, and then took her back to her hotel room, where she stayed for five days. Hardeman repeatedly asked the girl to have sex with him, and after she

1 refused his advances, he forced her to have sexual intercourse with him. He then dropped her off at the
2 U.S. Embassy. At the time, Hardeman was required to register as a sex offender based on his 1980 and
3 1986 convictions for sex offenses that also involved young teenage girls.

4 **STATEMENT OF FACTS**

5 In December 2007, Hardeman approached a 13-year-old girl – referred to here as “R.” – who was
6 lost and sitting alone on a sidewalk in Mexico City. Hardeman asked R. what her name was, told her that
7 he knew her mother, and kissed her. Hardeman also asked R. how old she was, and R. told him she was
8 13. Hardeman bought R. some food, took her to a movie, and then took her back to his hotel room. The
9 hotel room had one bed and no windows. Hardeman told R. to take a shower. R. locked the door while
10 she was showering, but she heard Hardeman trying to open the door. After R. finished her shower, she put
11 her clothes back on. Hardeman then took a shower, and came out of the bathroom wearing only a pair of
12 bikini underwear. He got into bed and told R. to get in bed with him. Hardeman touched the side of R.’s
13 body from her armpit to her thigh. R. told Hardeman to stop, but he wouldn’t, so R. got out of the bed and
14 slept on the floor. The next morning, Hardeman asked R. to have sex with him, but she refused. A couple
15 days later, Hardeman asked R. to have sex with him again, and when she refused, he grabbed R. by her
16 shoulders and pushed her down onto the bed. Hardeman held R. down by her neck, pulled down his pants,
17 and then pulled down R.’s pants and underwear. Hardeman then put his penis in R.’s vagina. When
18 Hardeman had finished raping R., she ran to a corner of the room and cried.

19 On December 13, 2007, Hardeman visited the U.S. Embassy in Mexico City and spoke to a
20 Foreign Service officer. He told the officer that he had found a U.S. citizen child who lived on the streets
21 of Mexico City near his hotel. Hardeman claimed that he tried to convince the child to come to the
22 Embassy with him but she refused. Four days later, on December 17, 2007, Hardeman returned to the
23 U.S. Embassy, this time with R. Hardeman stated that he had found R. five days earlier. R. later told
24 embassy employees that she had stayed in Hardeman’s hotel room for five days, and that Hardeman had
25 tried to convince her to have sex with him. During Hardeman’s first visit to the embassy, he did not tell
26 embassy employees that R. was staying in his hotel room.

27 Two months later, Hardeman emailed the Foreign Service officer whom he had met in Mexico
28 City. He wrote that he was “the one who brought 13-year-old R. to the embassy near the end of 2007” and

1 that he “had a right to know if she was taken care of properly.” He asked the Foreign Service officer
2 where R. was, and to give her his email address and ask her to keep in touch with him.

3 Employees at the Mexico City hotel where Hardeman stayed with R. remember that Hardeman
4 stayed there regularly, and often took women to his room. The manager told Hardeman that he could only
5 have registered guests in his hotel room, so Hardeman wrote “Hardeman and girlfriend” in Spanish on his
6 registration card. The hotel employees saw Hardeman approach R. on the street, and saw Hardeman take
7 her to his room. A maid found a pair of girl’s panties in the garbage can in Hardeman’s hotel room. The
8 room that Hardeman stayed in is just large enough for one double bed, and has no windows. The month
9 after R. stayed with Hardeman, he made the acquaintance of George Eaton, another American staying at
10 the hotel. Hardeman told Eaton that he comes to Mexico City because he likes going out with young girls.
11 Agents who searched Hardeman’s camera found film containing 14 photographs of a young teenage girl,
12 including one in which she spreads her legs to the camera, exposing her vagina. A hotel employee
13 remembers Hardeman bringing this girl to his room, remembered the girl’s name, and that she looked very
14 young.

15 When ICE agents later interviewed Hardeman about R., he lied to them, telling them that when he
16 met R. in Mexico City and learned she was a U.S. citizen, he immediately took her to the U.S. Embassy
17 and dropped her off. When agents pressed Hardeman about how much time he had spent with R., he
18 admitted that it was “a few days.” Hardeman then refused to answer any more questions about R. In a
19 later interview, Hardeman told agents that he visits Mexico City because “what happens in Mexico City
20 stays in Mexico City.”

21 A forensic analysis of a computer in Hardeman’s home shows that Hardeman used the computer,
22 about eight months after his sexual assault of R., to search for child pornography on the internet. In
23 personal writings, Hardeman confesses his sexual attraction to young teenage girls, and that he considers
24 his previous convictions for sex offenses involving children to be “battle scars” in his personal fight for
25 more liberal laws regarding the age of consent. Though Hardeman’s writings argue that consensual sex
26 between an adult and a child as young as ten should be legal, he also writes that he cannot understand
27 when the mouth says “no” but the body says “yes.”
28

ARGUMENT AND AUTHORITIES

The elements of an offense under 18 U.S.C. § 2423(c) are (1) the defendant is a United States citizen or alien admitted for permanent residence; (2) the defendant traveled in foreign commerce; and (3) the defendant engaged in illicit sexual conduct with another person, or attempted the same, after having traveled in foreign commerce. The elements of an offense under 18 U.S.C. § 2260A (in the context of this case) are that the defendant committed a violation of 18 U.S.C. § 2423(c) or an attempted violation of 18 U.S.C. § 2423(c) while being required by Federal or other law to register as a sex offender.

Section 2423(c) defines illicit sexual conduct as a sexual act with a person younger than 18 that would be a violation of Chapter 109A if it had occurred in the special maritime and territorial jurisdiction of the United States, or any commercial sex act with a person younger than 18. The government has previously clarified that it does not contend that Hardeman engaged in a commercial sex act, and that the sexual act that the government will prove involves contact between the penis and vulva, as described in 18 U.S.C. § 2246(2)(A). The violation of Chapter 109A that Hardeman committed is sexual abuse of a minor, in violation of 18 U.S.C. § 2243(a). This is commonly known as the federal statutory rape law, and criminalizes a person's knowingly engaging (or attempting to engage) in a sexual act with someone who is at least 12 but younger than 16 years of age, and who is at least four years younger than the defendant.

As the Court is aware from the parties' other pretrial filings, numerous evidentiary and trial management issues remain to be resolved before the trial of this case begins. The government will not review those issues here. The Court's rulings at the pretrial conference will significantly affect the shape of the trial. At this point, however, the government remains hopeful that a trial can be completed in two weeks, depending upon the length of defense cross-examination, the number of defense and rebuttal witnesses, and whether the counts are tried together or separately, as the defense has requested.

DATED: July 3, 2013

Respectfully submitted,

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/s/

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